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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 10 दिसम्बर, 2004

का.आ. 1355(अ).— केन्द्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37), जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है, की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का.आ. 573 (अ), तारीख 14 मई, 2004 द्वारा लिबरेशन टाईगर्स ऑफ तमिल ईलम (जिसे इसमें इसके पश्चात् एल.टी.टी.ई कहा गया है) को विधिविरुद्ध संगम घोषित किया था ;

और केन्द्रीय सरकार ने, उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का.आ. 667(अ), तारीख 8 जून, 2004 द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण का (जिसे इसमें इसके पश्चात् उक्त अधिकरण कहा गया है) गठन किया था जिसमें न्यायमूर्ति ए.के.सीकरी, न्यायाधीश, दिल्ली उच्च न्यायालय थे ;

और केन्द्रीय सरकार ने, उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना इस बारे में न्यायनिर्णयन के प्रयोजन के लिए 11 जून, 2004 को उक्त अधिकरण को निर्दिष्ट की थी कि क्या उक्त संगम को विधिविरुद्ध घोषित करने के लिए पर्याप्त कारण था अथवा नहीं ;

और उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना संख्या का.आ. 573 (अ), तारीख 14 मई, 2004 में की गई घोषणा की पुष्टि करते हुए 8 नवम्बर, 2004 को एक आदेश (जिसे इसमें इसके पश्चात् उक्त आदेश कहा गया है) किया ;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में उक्त अधिकरण के उक्त आदेश को प्रकाशित करती है, जो इस प्रकार है:-

(निर्णय अंग्रेजी में छपा है।)

[प. नं. 1-11034/9/2003-अ.एस. III]

एल. सी. घोषल, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 10th December, 2004

S.O. 1355(E).— Whereas the Central Government, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) hereinafter referred to as the said Act, declared vide notification of the Government of India in the Ministry of Home Affairs number S.O. 573 (E), dated the 14th May, 2004 the Liberation Tigers of Tamil Eelam (hereinafter referred to as LTTE) to be an unlawful association;

AND WHEREAS the Central Government, in exercise of the powers conferred by sub-section (1) of section 5 of the said Act, constituted vide notification of the Government of India in the Ministry of Home Affairs number S.O. 667(E), dated the 8th June, 2004 the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Mr. Justice A.K. Sikri, Judge of the Delhi High Court;

AND WHEREAS the Central Government, in exercise of the powers conferred by sub-section (1) of section 4 of the said Act, referred the said notification to the said Tribunal on 11th June, 2004 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as unlawful;

AND WHEREAS the said Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an Order (hereinafter referred to as the said Order) on the 8th day of November 2004, confirming the declaration made in the notification number S.O. 573 (E), dated the 14th May, 2004;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the said Order of the said Tribunal, namely :-

**BEFORE THE UNLAWFUL ACTIVITIES
(PREVENTION) TRIBUNAL CONSTITUTED
vide notification number S.O. 573 (E),**

dated the 14th May, 2004

In Re:

LIBERATION TIGERS OF TAMIL EELAM(LTTE)

CORAM:

HON'BLE MR JUSTICE A.K.SIKRI

PRESENT:

**Union of India through Ms. Barkha Babbar, Advocate.
Mr. Mukesh Mittal, Director, (Internal Security Division), Ministry of
Home Affairs, New Delhi.**

**State of Tamil Nadu through Mr. S. Jayakumar, Advocate
Mr. A. Kandaswamy, Superintendent of Police with Inspector K.
Chandrashekharan, 'Q' Branch, CID Headquarter, Chennai.**

Judgement:

The Central Government has issued Notification dated 14th May, 2004 in exercise of powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the

'Act'). This Notification declares the Liberation Tigers of Tami Eelam (hereinafter referred to as the 'LTTE' for short) has been declared as unlawful association. It is also directed in this Notification that it shall, subject to any order that may be made under Section 4 of the said Act, have effect on and from the date of its publication in the Official Gazette. Under Section 4 of the Act power is with the Tribunal to declare such an association as unlawful. The Notification, therefore, has to be, in a way, approved by the Tribunal within six months. It is for this reason that this Notification was followed by Notification No.667(E) dated 8th June, 2004 issued under Section 4(1) of the Act making reference to the Tribunal to adjudicate whether or not there was sufficient cause for declaring the LTTE as unlawful. As required by Rule 5 of the rules framed under the Act, the Central Government alongwith the reference also forwarded the resume regarding the aims, objectives and activities of the LTTE. The Constitution of the Peoples of Liberation Tigers, the front organisation of the LTTE was also enclosed with the reference. Reference also included the cases registered/arrests made including Tamil chauvinist groups in Tamil Nadu since May, 2002. It is in view of the aforesaid Notification that this Tribunal has initiated the proceedings and is to determine the aforesaid question.

On receipt of the reference preliminary hearing was held on 14th June, 2004 on which date notice to show cause was issued to the LTTE under subsection (2) of Section 4 of the Act, i.e. under this provision LTTE was asked to show cause as to why it be not declared unlawful. This notice was returnable on 31st July, 2004. Since there was no particular address of the LTTE in India, it was directed that notices be published in the "Indian Express" and the "Hindu" in Tamil Nadu and Delhi Editions and one daily issue of newspaper published in Tamil language in Tamil Nadu. It was also

directed that notices be published in two leading newspapers of Sri Lanka either in "Island" or "Virakesari" or "Daily News" or "Thinkara Sunday Observer". As the international secretariat of the LTTE is stated to be located in Eelam house, 202, Long Lane, London, SE14QB, it was further directed that notices be also issued to the LTTE on the aforesaid address and be published in the leading newspaper "Times" of the United Kingdom as well. In addition, it was directed that the notice be also affixed at some conspicuous part of the office of the LTTE, if any, and a copy of the same be also served upon the office-bearer, if any, by registered post or otherwise.

The Central Government was directed to take necessary steps for servicing the notices in the aforesaid manner within two weeks and also to file service report with the Registrar of the Tribunal within two weeks thereafter duly supported by the affidavits of the concerned officials who effected the service along with supporting documents. The notices were duly sent to the LTTE as directed. Affidavit of Sh. Randhir Singh, Under Secretary, Ministry of Home Affairs, dated 27th July, 2004 regarding service of the show cause notice on LTTE was filed, inter alia, affirming that pursuant to the directions by this Tribunal the Ministry of Home Affairs requested the Ministry of External Affairs, Government of Tamil Nadu and the Directorate of Advertising and Visual Publicity, New Delhi, to get the needful done according to the directions contained in order dated 14th June, 2004. The steps were taken by the aforesaid authorities and they had forwarded the following documents to the Ministry of Home Affairs:-

- i) Ministry of External Affairs D.O. No.I/i/102/08/2002 dated 28th June, 2004 (Annexure I) confirming that the notice was served on LTTE local offices in London on 26.6.2004 and was also published in the newspapers "Times" of United Kingdom on 26th June, 2004. The notices were published in the "Daily News" and "Thinakaran" on 26.6.2004 in Sri Lanka.

ii) The Government of Tamil Nadu letter No.SR.III/808-8/204 dated 30th June, 2004 (Annexure-II) forwarding photocopies of the notices that appeared in "The Hindu" and "The New Indian Express" Tamil Nadu editions and "Daily Thanthi" (Tamil) on 27.6.2004, published by the Government of Tamil Nadu, directing the Director General of Police, Tamil Nadu, all Collectors/SPs in the districts and all Commissioners of Police to exhibit the notice in their offices' Notice Boards.

iii) The Directorate of Advertising and Visual Publicity letter No.3104/0097/2004 dated 10th July, 2004, intimating that show cause notice was published in "Indian Express" and "The Hindu" on 12.6.2004 (Annexure-III).

The aforesaid letters received from the Ministry of External Affairs, Government of Tamil Nadu and the Directorate of Advertising and Visual Publicity were enclosed with the said affidavit. Also enclosed were the publications wherein the notices were published.

Despite the service on the LTTE in the aforesaid manner no one appeared on its behalf, nor any representation was received. In the hearing held on 31st July, 2004 the LTTE was accordingly proceeded ex parte. Union of India as well as State of Tamil Nadu were represented in the hearing held on 31st July, 2004. Therefore, Union of India and State of Tamil Nadu were directed to lead their evidence in the form of affidavits with supporting material. The LTTE has, it is evident from the above, failed to show cause. Still, the Central Government is required to justify its action. This Tribunal would declare the LTTE as unlawful association only if it is satisfied that there is sufficient material to arrive at such a conclusion. On behalf of Central Government affidavit of Mr. Mukesh Mittal, Director, Internal Security, Ministry of Home Affairs has been filed. Mr. A.

Kandaswamy, Superintendent of Police, 'Q' Branch, CID, State of Tamil Nadu, tendered his affidavit dated 28th July, 2004 and two additional affidavits dated 2.9.2004 and 13.9.2004. On 28th October, 2004 statements of Mr. Mukesh Mittal as well as Mr. A. Kandaswamy were recorded at Kanyakumari. Thereafter arguments were heard on 30th October, 2004. Ms. Barkha Babbar, Advocate argued the case on behalf of the Central Government and Mr. S. Jayakumar, Advocate made his submissions on behalf of the State of Tamil Nadu.

At this stage, it would be apposite to reproduce Notification dated 14th May, 2004. It reads as under:-

"S.O. 573(E).--WHEREAS the Liberation Tigers of Tamil Eelam (hereinafter referred to as the LTTE), is an association actually based in Sri Lanka but having sympathizers, supporters and agents on the Indian soil;

AND WHEREAS the LTTE's objective for a separate homeland (Tamil Eelam) for all tamils threatens the sovereignty and territorial integrity of India, and amounts to cession and secession of a part of the territory of India from the Union and thus falls within the ambit of unlawful activity;

AND WHEREAS, the turbulence in Sri Lanka is being exploited by pro-LTTE forces to draw up support for the LTTE and its cause by taking out processions, demonstrations, etc., in spite of the ban, causing disquiet and threat to the security of the State of Tamil Nadu.

AND WHEREAS most of the criminal cases involving the LTTE and pro-LTTE groups like Tamil National Retrieval Troops (TNRT), Tamil Nadu Liberation Army (TNLA) and Tamiliar Pasarai, have ended in conviction but the Tamil Eelam concept still

remains as a goal among the pro-LTTE groups in Tamil Nadu. The forces are still at work to further its cause thereby contributing to the vulnerable milieu in which the LTTE's free functioning in India as a lawful association, if allowed, would be highly detrimental to the sovereignty and territorial integrity of India;

AND WHEREAS the LTTE continues to be an extremely potent, most lethal and well-organized terrorist force in Sri Lanka and has strong connections in Tamil Nadu and certain pockets of southern India. The LTTE continues to use the State of Tamil Nadu as the base for carrying out smuggling of essential items like petrol and diesel, besides drugs to Sri Lanka;

AND WHEREAS the LTTE will continue to remain a strong terrorist movement and stimulate the secessionist sentiments to enhance the support base of the LTTE in Tamil Nadu as long as Sri Lanka continues to remain in a state of ethnic strife torn by the demand for Tamil Eelam which finds a strong echo in Tamil Nadu due to the linguistic, cultural, ethnic and historical affinity between the Sri Lankan and the Indian Tamils in Sri Lanka.

AND WHEREAS for the reasons aforesaid, the Central Government is of the opinion that the LTTE is an unlawful association and there is a continuing strong need to control all such separatist activities by all possible means;

AND WHEREAS the Central Government has the information that-

(i) enquiries on the activities of the LTTE cadres/dropouts who have been traced out recently in the State of Tamil Nadu would suggest that the cadres sent to Tamil Nadu would ultimately be utilized by the LTTE for unlawful activities;

1. the activities of pro-LTTE organizations and individual have come to notice in India, despite the ban in force and attempts have been made by these forces to extend their support to the LTTE;

2. the LTTE leaders have been cynical of India's policy on their organization and reaction of the State machinery in curbing their activities. The resolution passed in the Tamil Nadu State Assembly to extradite the LTTE leader V. Prabhakaran, evoked strong criticism from pro-LTTE in India and in Sri Lanka.

AND WHEREAS the Central Government is of the opinion that the aforesaid activities of the LTTE continue to pose threat to, and are detrimental to, the sovereignty and territorial integrity of India as also public order and, therefore, should be declared as an unlawful association;

AND WHEREAS the Central Government is further of the opinion that because (i) of its continued violent and disruptive activities prejudicial to the integrity and sovereignty of India; (ii) it continues to adopt a strong anti-India posture and also continues to pose a grave threat to the security of Indian nationals, it is necessary to declare the LTTE as "an unlawful association" with immediate effect;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) and proviso to sub section (3) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Liberation Tigers of Tamil Eelam (the LTTE) as an unlawful association and directs that this notification shall, subject to any order that may be made under section 3 of the said Act, have effect on and from the date of its publication in the Official Gazette."

In the affidavits filed by the aforesaid two parties, both have highlighted the background in which the Notifications were passed declaring the LTTE as unlawful association under the Act. It is stated that for the time such Notification was issued by the Government of India on 14th May, 1992, which was for a period of two years from the said date. Thereafter successive Notifications were passed on 14th May, 1994, 14th May, 1996, 14th May, 1998, 14th May, 2000 and 14th May, 2002. The Tribunals

constituted each time, with the passing of the aforesaid Notifications, confirmed the declarations made in the aforesaid Notifications. Consequence of these Notifications under sub-section (3) of Section 4 of the Act and confirmation of the declaration by the successive Tribunals under sub-section (3) of Section 4 of the Act, was that right from 14th May, 1992 the said organisation is declared as unlawful association under the Act and it continues to be so. Since the earlier Notifications were upheld and the successive Tribunals also declared the LTTE as an unlawful association, it can be deducted that satisfaction has been recorded about the unlawful activities of the LTTE right from 1992. Last Notification dated 14th May, 2002 expired on 13th May, 2004 and on the following day Notification dated 14th May, 2004, subject-matter of the present proceedings, has been issued. On the basis of the aforesaid factual backdrop it is stated that LTTE is continuing with the unlawful activities which forced the Central Government to issue successive Notifications.

It is stated that since LTTE has protracted with its violent and disruptive activities prejudicial to the integrity and sovereignty of India, Notification dated 14th May, 2004 has been issued declaring it to be an unlawful association. It is done after forming the opinion that these activities of the LTTE continue to pose threat and are detrimental to the sovereignty of India as well as public order. In the affidavit of Mr. Mukesh Mittal it is stated that the Central Government is satisfied that LTTE, which is basically a foreign based organisation, is operating on Indian soil as well and has continued to indulge in the activities all through after the first Notification dated 14th May, 1992 was issued. The aims and objects of the political wing of the LTTE with attempts to translate through the activities of the LTTE cadres show clearly that behind all these activities there is a clear intention to cede Tamil Nadu State from the Indian Union. Therefore,

it has become necessary to continue the ban on LTTE under Section 3 of the Unlawful Activities (Prevention) Act, 1967, to preserve the territorial integrity and sovereignty of India. In view of the existing laws, no organization whether Indian or foreign based, can avowedly claim that it is for cessation or it can question the sovereignty and territorial integrity of India. According to this affidavit, the evidence, which is given therein clearly shows that one of the objectives of the LTTE is to bring into existence a separate Tamil country by creating cessation in India as well as in Sri Lanka. All the organizations and persons, supporting the cause of the LTTE and spreading the feeling for a separate Tamil Eelam consisting of parts of India and parts of Sri Lanka get material and monetary support from the LTTE, and the LTTE is the source of all their inspiration. It is submitted that action under Section 3 of the Act is necessitated to prevent the cessation of a part of India and to preserve the national unity and territorial integrity of India. It is claimed that the material before the Central Government and before the Tamil Nadu Government clearly shows that the LTTE is assiduously and continuously and with determination planning for cessation of Tamil Nadu from the India Union. Therefore, there is an imminent necessity to issue the notification in public interest and in the interest of sovereignty and territorial integrity of India.

In order to demonstrate that there was enough material before the Central Government to form the aforesaid opinion and to accord satisfaction that LTTE is to be declared as unlawful association, the affidavit gives the details, which may be categorised under the following heads:-

- A) Background details of the LTTE, including its objectives as well as creation of secessionist organisations by the LTTE in furtherance of its objectives seeking secession of Tamil Nadu and questioning India's sovereign and territorial integrity.

B) Various activities of these organisations since May, 2002, evident from:-

- i) Registration of series of cases under the Act against LTTE cadres, pro-LTTE elements and Tamil chauvinist groups.
- ii) Some cases, registered earlier and pending trial before the courts, ending in conviction.
- iii) Various speeches, of inflammatory nature detrimental to the sovereignty and territorial integrity of India.
- iv) Other material furnished by the Government of Tamil Nadu and also corroborated by available reports.

A. BACKGROUND:

In the affidavit of Mr. Mukesh Mittal the background is narrated in the following manner:-

“(a) The Liberation Tigers of Tamil Eelam (LTTE) was originally formed in 1974 as Liberation Tigers. It took its present name in 1976. The LTTE declared its ultimate objective as 'Total Liberation of its homeland and the establishment of an independent, sovereign socialist State of Tamil Nadu.

(b) In the course of its growth, LTTE has been able to carve out a well-knit infrastructure and has methodically brought up its organizational structure, which has been able to sustain years of armed struggle against the Sri Lankan Army. LTTE is broadly divided into political, military, medical and intelligence wings. Each wing has a set hierarchy and the rules of the functionaries are explicitly spelt out. The overall in charge of LTTE is Vellupillai Prabhakaran @ Karialan. Pottu Amman is the Chief of LTTE's Intelligence Wing. Kapil Amman being the Chief of the Internal wing with responsibility for overall administration of both internal and external wings.

(c) Since early 1989, the LTTE started using Tamil Nadu as a launching pad for its operation in Sri Lanka. The situation became ominous in 1989-90 when the LTTE cadres started infiltrating into the State under the guise of refugees. Those injured in the fighting in Sri Lanka also found the State to be a safe haven for their treatment and welfare. The outfit continues to use Tamil Nadu as a base for securing its logistical requirements. Apart from infiltration in the garb of refugees, the LTTE cadres found it very convenient to have access to interior places in the State through various land routes emanating from as many as 500 odd landing places in the coastal areas of Thanjavu, Pudukottai and Ramananthapuram districts. Boats were being used for bringing the cadres/leaders to the landing points from where transportation to various places did not pose any problem at all as they had procured adequate number of vehicles through their local contracts and associates. These sea and land routes were converted by the LTTE into prolific smuggling channels and supply lines. Medicines, clothing, arms, ammunitions, explosives and provisions were being smuggled out to Jaffna and other LTTE bases in Sri Lanka. Gold was being smuggled into India for meeting the case requirements and supplementing their revenues.

(d) In order to sustain these smuggling and other clandestine operations, the LTTE had set up an effective network of Radio, W.T. Communications between Sri Lanka and Tamil Nadu and also within the State. LTTE cadres started using sympathetic locals, particularly those with impressionable minds, for assisting the former in these various tasks. This created a close nexus between the LTTE cadres and gullible locals who were being closely injected with the poison of secession through terror means.

B. OBJECTIVE OF LTTE:

- (i) The Constitution of the People's Front of Liberation

Tigers (PFLT), the political front of LTTE includes, inter alia, the following objectives:-

- (a) to fight for the right of self-determination of the Tamils and Muslims;
- (b) to protect and preserve the geographical identity and integrity of the traditional homelands of the Tamils and Muslims.

A copy of the Constitution of the People's Front of Liberation Tigers is at Annexure-I. It is significant that these objectives speak of all Tamils irrespective of geographical distinction and an inference is irresistible that while the immediate struggle of LTTE is against the Government of Sri Lanka, its larger objective, given the geographical contiguity and ethnic affinity, would include the Tamil areas of India also and thus pose a real and serious threat to the sovereignty and territorial integrity of India. There is no indication to show that PFLT have revoked their continuation or in any manner retracted from its avowed objectives of creating an independent and separate Tamil Eelam consisting of parts of India.

The activities of LTTE and pro-LTTE groups require constant vigil and monitoring. Sympathy for the Tamil Eelam concept still remains and the forces are still at work to further the cause of separate Tamil Nadu, i.e. secession from India, for which they are drawing inspiration and sustenance from LTTE. In order to control these secessionist forces, it is extremely important to continue to exercise strict control over the activities of LTTE and to ensure that their militant activities do not re-emerge in Tamil Nadu, in any potent manner.

The LTTE has created the Tamil National Retrieval Troops (TNRT), TNLA and Tamiliar Passarai, Secessionist Organizations in Tamil Nadu in furtherance of its objective seeking secession of Tamil Nadu and questioning India's sovereignty and Territorial integrity. LTTE cadres/sympathizers/ drop-outs are arriving in Tamil Nadu despite the existing ban. If the ban is lifted,

their activities would increase to the detriment of the security of the State. The chauvinist forces in support of LTTE would emboldened to indulge in anti-national activities, paving the way for the secession of Tamil Nadu. Their indulgence in illegal activities openly with the tacit support of the chauvinist forces cannot be ruled out if the present ban is not extended, the chances of infiltration by the LTTE into the State would pose a grave threat to the sovereignty and territorial integrity of India.”

Mr. Mukesh Mittal, in this affidavit, has given particulars of the series of such cases registered against LTTE cadres, pro-LTTE elements and Tamil chauvinist groups under the Act, since the last ban was imposed vide Notification dated 14th May, 2002. These cases are for the period May, 2002 to January, 2004 and details thereof are mentioned in Annexure-2 to the affidavit.

It is further stated that these cases reflect the remnant of LTTE activities and pro-LTTE groups like Tamiliar Passarai, Tamil National Retrieval Troops, Tamil Nadu Liberation Army etc. which still continue to pose a danger to the security of the State. Since the Unlawful Activities (Prevention) Act is an important tool available to the law enforcement agencies for controlling such activities, it is very important that the LTTE continues to remain an unlawful association for a further period of two years from 14.5.2004, failing which there is imminent danger of the LTTE forces again establishing a foot hold in Tamil Nadu, which can have a strong destabilizing effect on the sovereignty and territorial integrity of the country as a whole, apart from seriously disturbing peace and tranquility in Tamil Nadu.

Example of conviction is given by mentioning judgment and sentence dated 1st October, 2002 passed by the Court of Judicial Magistrate No.II,

Tiruchirapalli in Case No. 463/2002 wherein two accused and six other persons (all Sri Lankan nationals) stated to be closed associates of Indira, another Sri Lankan national, were convicted of conspiring to smuggle medicines to Sri Lanka for LTTE movement from Trichi. They were ordered to undergo six months rigorous imprisonment under Section 120(B) IPC; six months rigorous imprisonment for offence under Section 13(2) of the Unlawful Activities (Prevention) Act, 1967 and another six months rigorous imprisonment for offence under Section 14 of the Foreigners Act, 1946. From this conviction it is clear that the aforesaid accused were, inter alia, charged under the Act of 1967 as well and punished, inter alia, under Section 13(2) thereof, which reads as under:-

“13. Punishment for unlawful activities.--(1) xxx

(2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.”

Details of one more case resulting in conviction are as under:-

“B3 Kattur P.S. Cr. No. 786/2001, u/s. 41(1) and 102 Cr. P.C.

a) On 24.5.2001, Kumar @ Pulikumar @ Mevikumar (23) s/o Mevethipadayachi @ Rayapadayachi, Melakkadu, Anuppur Post, Salem, Chengaputheri, Polur Taluk, Thiruvannamali district (State President, Redical Students' Union the front organisation of People's War Group of CPI-ML) were arrested in Coimbatore. Three Video Cassettes of “Oayatha Alaigal”, Erimalai magazine for November 2000, an album containing LTTE related matters, two photographs of LTTE leader Velupillai Prabhakaran, etc. were seized from Kumar's possession. Similarly 70 copies of pamphlets in Tamil brought out by PWG

in connection with the ninth plenum in Kolkatta on 31.5.91, etc. were seized from the possession of Vinayagam. In this connection, a case in B3 Kattur PS. Cr. No. 786/2001, u/s. 41(1) and 102 Cr.P.C. @ 153 (B-1)(c) IPC 10 and 13 of Unlawful Activities (Prevention) Act, 1967, was registered. Charge sheet against the accused was filed u/s. 10 and 13 of the Unlawful Activities Prevention Act, 1967 and 153 (B-1)(c) IPC.

b) On 15.10.2003, the Hon'ble Judicial Magistrate No.II, Coimbatore convicted and sentenced A-1 Pulikumar to undergo R.I. For 2 years and to pay a fine of Rs.1000/- and R.I. For 3 years for the offence committed u/s. 10 and 13 of the Unlawful Activities (Prevention) Act, 1967, respectively. A-2 Vinayagam was convicted and sentenced to undergo R.I. for 2 years and fined Rs.1,000/- and R.I. for 3 years for the offence committed u/s. 10 and 13 of Unlawful Activities (Prevention) Act, 1967, respectively."

The Annexure gives the details of some cases registered during this period. It mentions four such cases registered under the Act of 1967 as well as under the Provisions of POTA, 2002 and different provisions of the IPC. The perusal of allegations made in these cases registered against certain persons would show that the persons charged are alleged to have given speeches in support of LTTE, a banned organisation, which attracts the provisions of Section 13(1)(a) of the Act, 1967 as well as other statutes. Without giving the details of all these cases, it would be of relevance to give detail of one such cases:-

"Thoothukudi South P.S. Cr. No. 685/2002 u/s. 21 of POTA, 2002 and 506 (ii) IPC.

Maran @ Senguttuvan (TNLA) s/o Singharam, threw a piece of paper towards the press persons, while he was produced before the J.M. I Court, Thoothukudi on 3.9.2002 in connection with Thattaparai PS Cr. No. 51/99. The piece of paper

contained anti-national slogans, stating that Tamil Nadu people are suffering under the present regime, threatening to blast the Sterlite factor next time when they land in Thoothukudi, urging the Central Government to bring their long cherished dream of recognizing LTTE and Tamil Eelam and to lift the ban on TNLA, claiming that support to LTTE and its leader Prabhakaran is a right of each and every Tamil, vowing to bring the dream of Tamilarasaun into reality on the eve of his remembrance day on 1st September and to take up the liberation struggle of Tamil Nadu with the support of working class through armed revolution by protesting against privatization and liberalization policies of the Government, etc. In this connection a case in Thoothukudi South P.S. Cr. No. 685/2002 u/s. 21 of POTA 2002 and 506 (ii) IPC, was registered on 10.9.2002. Later, the sections of POTA were dropped.”

Mr. Mukesh Mittal, in his affidavit has also affirmed on oath that from the material furnished by the State of Tamil Nadu and also corroborated by available reports, the following grounds would emerge in justification of a further ban on the LTTE:

- i. “Enquiries on the activities of LTTE cadres/dropouts who have been traced out recently would suggest that the cadres sent to Tamil Nadu would ultimately be utilized by the LTTE for unlawful activities.
- ii. The activities of Pro-LTTE organizations and Tamil chauvinists groups have come to notice in India, despite the ban in force and attempts have been made by these forces to extend their support to the LTTE. The LTTE cadres/sympathizers/drop-outs are reportedly arriving in Tamil Nadu. If the ban were to be lifted, their activities would increase in a manner causing breach to the security of the State. If the present ban is not extended with immediate effect the chances of infiltration by the LTTE into the State would pose a grave threat to the sovereignty and territorial integrity of India.

- iii. The LTTE leaders have been cynical over India's policy on their organizations and reaction of the State machinery in curbing their activities. The resolution passed in the State Assembly to extradite the LTTE leader V. Prabhakaran, evoked strong criticism from Pro-LTTE elements in India and Sri Lanka.
- iv. The United States has also designated the LTTE as a foreign terrorist organization.
- v. Though the struggle of the LTTE is against the Government of Sri Lanka, its larger and ultimate objective is to form a vast Tamil country including areas of India where Tamils live. The Tamil Eelam concept, therefore, is likely to be highly detrimental to the sovereignty and territorial integrity of India. This concept clearly falls within the ambit of an unlawful activity.
- vi. The State Government has furnished details of cases registered and the arrests made indicating the proof of continued activities of the LTTE and Pro-LTTER groups in the State of Tamil Nadu. The details are furnished in Annexure-II.
- vii. The cases filed against Pro-LTTE elements and chauvinist groups between May 2002 and January 2004 under various Acts reflect the remnants of LTTE activities and pro-LTTE groups like Tamiliar Passarai, Tamil National Retrieval Troops, Tamil Nadu Liberation Army etc., which still continue to pose a danger to the security of the State. Since the Unlawful Activities (Prevention) Act is an important tool available to the law enforcement agencies for controlling such activities, it is very important that the LTTE continues to remain an unlawful association beyond 13.5.2004, failing which there is imminent danger to the LTTE forces again establishing a foot hold in Tamil Nadu, which can have a strong de-establishing effect on the sovereignty and territorial integrity of the country as a whole, apart from seriously disturbing peace and tranquility in Tamil Nadu.

- viii. Subsequent to the last extension of ban on the LTTE in 2002, some of the cases that were registered from 1990 onwards and that were pending trial before the courts, have ended in conviction, which were all based on the evidence deposed and on account of unlawful acts indulged in by the LTTE.
- ix. Though the LTTE is one of the 32 organizations which have been declared as 'terrorist organizations' in India under the POTA, 2002, it is felt that the ban on the LTTE under the Unlawful Activities (Prevention) Act needs to be extended beyond 13.5.2004 as unlawful activities of the organization, inter alia, include supporting the cession of a part of the territory of India or the secession of a part of the territory of India from the Union and inciting Tamil Chauvinist Groups to bring about such cession or secession. By doing so, the LTTE disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India. The existing provisions of the POTA, 2002 do not specifically cover this activity. Though the POTA, 2002 and the Unlawful Activities (Prevention) Act overlap in certain matter, the scope of these two acts are different. Further, the provisions of POTA, 2002 do not seem to cover all the exigencies covered under the Unlawful Activities (Prevention) Act, 1967. It is, therefore, considered necessary to extend ban on the LTTE beyond 13.5.2004 under the Unlawful Activities (Prevention) Act, 1967."

In support of the aforesaid averments made in the affidavit plethora of documents are filed. In addition to those documents to which reference has already been made above, some of the other documents to the following effect are filed:

1. A copy of FIR, speech report and its translated version and a copy of the charge sheet in respect of a case registered in Thirumangalam Town P.S. Cr. No. 289/2002.

2. A copy of FIR, speech report and its translated version in respect of a case registered in Kavundapadi P.S. Cr. No. 201/2002.
3. A copy of Government order dated 13.8.2002 declaring Tamilar Desiya Iyakkam as an Unlawful Association under the Criminal Law Amendment Act 1908.
4. A copy of the Commissioner of Police, Chennai's report dated 18.2.2003 addressed to Chief Secretary to the Government, Chennai. A copy of the FIR No. 1417/2002 dated 6.9.2002 registered in Police Station, E-4, Abiramapuram along with its English translation.
5. A copy of the FIR No. 685/2002 dated 10.9.2002 registered in Police Station Thoothukudi South along with its English translation.
6. A copy of FIR No. 999/2002 dated 28.9.2002 registered along with its English translation.
7. A copy of the judgment dated 15.10.2003 passed by the Judicial Magistrate-II, Coimbatore in case No.93/2003 along with its English translation.
8. Extracts of the speech of Pazha Nedumaran in Tamizhar Desiya Iyakkam public meeting at New Washermentpet, Chennai on 1.5.2002 along with its English translation.
9. Extracts of the speeches delivered in a public meeting organised by People's Democratic Youth Association at Jolarpet, Vellore District on 1.5.2002 along with its English translation.
10. A copy of the report of Inspector 'Q' Branch, CID, Cuddalore regarding speeches delivered by People Democratic Youth Association at Cuddalore District on 1.5.2002 along with its English translation.

11. A copy of the speech report continuing extracts of the speeches delivered in PMK Public Meeting at Mambalam, Chennai on 2.5.2002 along with its English translation.
12. A copy of the speech report containing extracts of the speech of G.K. Mani delivered in PMK Public meeting held at Porur, Chengalpattu East District on 3.5.2002 along with its English translation.
13. A copy of the speech report containing extracts of the speeches delivered in PMK Public meeting at Sithampur, Kancheepuram District on 4.5.2002 along with its English translation.
14. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Coimbatore District on 8.5.2002 along with its English translation.
15. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Puliakulum Coimbatore city on 9.5.2002 along with its English translation.
16. A copy of the speech report containing extracts of the speeches delivered in PMK Public meeting at Kollanur Villupuram district on 12.5.2002 along with its English translation.
17. A copy of the speech report containing extracts of the speeches delivered in demonstration organised by Tamizhar Desiya Iyakkam in Madurai City on 14.5.2002 along with its English translation.
18. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Valliyur Tiruneveli district on 16.5.2002 along with its English translation.
19. A copy of the speech report containing extracts of the speeches delivered in Symposium organised by MDMK at Orathanadu, Thanjavur district on 18.5.2002 along with its English translation.

20. A copy of the speech report containing extracts of the speeches delivered in Tamizhar Desiya Iyakkam public meeting at Than Javur on 19.5.2002 along with its English translation.
21. A copy of the speech report containing extracts of the speeches delivered in Tamizhar Desiya Iyakkam Public meeting at Ambattur, Chengal Pattu East district on 27.5.2002 along with its English translation.
22. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Kanyakumari district on 1.6.2002 along with its English translation.
23. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Sathyamangalam in Erode district on 2.6.2002 along with its English translation.
24. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Pozhichalur, Chengalpattu East district on 5.6.2002 along with its English translation.
25. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Sivathipuram, Tirunelveli District on 6.6.2002 along with its English translation.
26. A copy of the report of Inspector of Police 'Q' Branch CID, Madurai City regarding the public meeting held by members of Tamizhar Desiya Iyakkam in Madurai on 13.6.2002 along with its English translation.
27. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Poonamallee, Chengalpattu East district on 20.6.2002 along with its English translation.
28. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Ariyamangalam, Trichy district on 21.6.2002 along with its English translation.

29. A copy of the speech report containing extracts of the speeches delivered in MDMK Public meeting at Pettai, Tirunelveli district on 28.6.2002 along with its English translation.
30. A copy of the report of Inspector 'Q' Branch, CID, Coimbatore City regarding the interview given by P. Nedumeran, President Tamilar Desiya Iyakkam at Press Club, Coimbatore on 3.7.2002 along with its English translation.
31. A copy of the report of Commissioner of Police, Chennai City containing extracts of the speeches delivered at the meeting organized by World Tamil Federation held at Don Bosco Higher Secondary School, Egmore, Chennai City on 20.7.2002 and 21.7.2002 along with its English translation.
32. A copy of the report containing extracts of the speeches delivered in all party public meeting convened by MDMK at Vellore along with its English translation.
33. A copy of the report containing extracts of the speeches delivered in all party public meeting at Madurai City on 29.3.2003 along with its English translation.
34. A copy of the speech report of the Inspector of Police 'Q' Branch, CID, Kancheepuram District dated 5.7.2003 along with its English translation.
35. A copy of the speech report of the Inspector of Police 'Q' Branch, CID, Kancheepuram District dated 26.9.2003 along with its English translation.
36. A copy of the speech report of the Inspector of Police 'Q' Branch, CID, Kancheepuram District dated 16.1.2004 along with its English translation.
37. A copy of the report published in the Pacific News dated 25.9.2003.

38. A copy of the FIR No. 283/2002 dated 16.6.2002 registered at Police Station Uchipuli, District Ramnathpuram along with its English translation.
39. A copy of the FIR No. 92/2002 dated 22.7.2002 registered at Police Station Rameshwaram, District Ramnathpuram along with its English translation.
40. A copy of the FIR No. 48/2002 dated 29.7.2002 registered at Police Station, Dhanushkodi District Ramnathpuram along with its English translation.
41. A copy of the Press Report published in "The New Indian Express" dated 8.7.2002.
42. A copy of the Press Report published in "The New Indian Express" dated 9.12.2002.
43. A copy of the Press Report published in "The Hindu" dated 24.3.2003.
44. A copy of the Press Report Published in "The Hindu" dated 1.4.2003.
45. A copy of the Press Report published in "The Hindu" dated 15.6.2003.
46. A copy of the report published in the "Daily News" dated 16.6.2003.
47. A copy of the press report published in the "Hindu" dated 24.6.2003.
48. A copy of the Press report published in "The Hindu" dated 2.5.2002.
49. A copy of the website known as Lanka Wed containing the Statement made by Anton Balasingham, Political Advisor to LTTE Supremo Prabhakaran.
50. A copy of the press report published in "Tamil Guardian" dated 28.1.2004.

51. A copy of the report of Tamil Net dated 26.11.2003.
52. A copy of the News feature introducing the black Tigers as "The original suicide bombers of the world" given in Lanka Web dated 13.12.2002.
53. A copy of the Press report published in "The Hindu" dated 10.1.2003.
54. A copy of the Press report published in "The Hindu" dated 28.11.2003.
55. A copy of the Press report published in "The Hindu" dated 1.11.2002.
56. A copy of the Press report published in the "Times of India" dated 13.7.2002.

Mr.A.Kandaswamy, in his three affidavits, has stated the averments on somewhat similar lines, as given in the affidavit of Mr.Mukesh Mittal, narration whereof is given above; albeit with greater details. The statement of Mr.A.Kandaswamy which was recorded as PW-2 gives an indication of what is deposed by him in his affidavits. In his statement he has affirmed as under :

1. " I am presently serving as Superintendent of Police, 'Q' Branch, CID, Chennai, and as such I am fully conversant with the facts and records concerning the activities of the Liberation Tigers of Tamil Eelam (LTTE) in my official capacity. I am authorized to depose before the Tribunal under the Letter No. SR.III/888-11/2004, Public (SC) Department, dated 28.7.2004.
2. The Government of India, Ministry of Home Affairs, in exercise of the powers conferred in sub-section (1) and proviso to sub-section (3) of Section 3 of the Unlawful Activities (Prevention) Act, 1967, in their Gazette Extraordinary Notification No.573 (E) dated 14th May, 2004

have declared the Liberation Tigers of Tamil Eelam (LTTE) as an unlawful association with effect from 14.5.2004.

3. On behalf of the Government of Tamil Nadu, I tender in evidence my affidavit dated 28.7.2004 filed on 4.9.2004 as Ex.PW-2/A. Along with the said affidavit, I have filed compilation of Annexures A to G-2 containing 602 pages along with English translations. The said annexures are exhibited and marked as Ex. PW-2/A1 to Ex. PW-2/A65.
 - i. That the LTTE's objectives for a separate homeland (Tamil Eelam) for all Tamils threaten the sovereignty and territorial integrity of India. I state that the People's Front of Liberation Tigers, which is a political front of LTTE, enumerates various aims and objectives of LTTE on which two objects are significant-(i) to fight for the right of the self-determination of the people of the Tamils and Muslims; and (ii) to fight and preserve the geographical identity of the traditional homelands of the Tamils and Muslims.
 - ii. That these objectives speak of all Tamils irrespective of geographical distinction. I state that the given geographical continuity and ethnic affinity of Tamils though the immediate struggle of LTTE is against the Government of Sri Lanka, its ultimate aim is to include the Tamil speaking areas of India. There is thus a serious threat to the sovereignty and territorial integrity of the country. I state that the supporters of LTTE are conducting activities with the object of self-determination of Tamil people and establishing independent Tamil nation. Annexures B, B1 and B2 are the details of such activities, which are marked as Ex.PW-2/A34.

- iii. The LTTE has got number of sympathizers, supporters and agents in Indian soil. Despite the ban in force, attempts had been made by the sympathizers for extending their support. I state that the activities, the speeches, etc. indicate that the ultimate goal is Tamil Eelam and even for secession of Tamil Nadu from the Union of India. Annexures A1 to A29 are the speeches, reports on the speeches made in support of the LTTE, are marked as Ex.PW-2/A2 to Ex. PW-2/A30.
- iv. That the turbulence in Sri Lanka has been exploited by the pro-LTTE forces in India who are taking out processions, demonstrations, etc. in spite of the ban causing disquiet and threat to the security of the state. Annexures C to C4 are instances of such demonstrations of support, are marked as Ex.PW-2/A35 to Ex.PW-2/A39.
- v. That most of the criminal cases, which were registered against the supporters of LTTE and pro-LTTE groups, have ended in conviction. Annexures D to D2 are the judgments convicting the accused, who are supporters of LTTE, which are marked as Ex.PW-2/A40 to Ex. PW-2/A43. I state that despite the ban, LTTE, which is one of the most organized terrorist forces in the World, has strong links in Tamil Nadu and also Tamil speaking parts of the southern State. LTTE is using the coastal areas of South India for carrying out smuggling of explosives, petroleum products, other commodities, etc. to Sri Lanka. This smuggling continues despite the ban. Annexures E to E7, are the cases, which have been registered between 2002 and 2004, are marked as Ex.PW-2/A45 to Ex.PW-2/A52.

- vi. That LTTE continues to remain a potent terrorist movement and the demand for Tamil Eelam concepts finds a strong echo in Tamil Nadu due to the linguistic, cultural and historical affinity between the Sri Lankan Tamils and Indian Tamils. The pro-LTTE groups will always try to stimulate the secessionist sentiments and enhance their support base for LTTE in Tamil Nadu. Annexures F to F8 are the Press cuttings of various instances and operations conducted by the LTTE and also reports of the object of the LTTE which is the right of self determination of Tamil people. The said annexures are exhibited as Ex.PW-2/A53 to Ex. PW-2/A61.
- vii. That in the affidavit dated 20.7.2004, I have narrated the details about the enquiries of the activities of the LTTE cadres and the dropouts who were traced in Tamil Nadu and who were and who would be utilized by the LTTE. These reports are based on materials collected by intelligence agencies. I state that the LTTE leaders and sympathizers in India have been cynical over the policy of the Government of India to ban LTTE. They have also been critical of the resolutions passed in Tamil Nadu assembly to extradite the LTTE leader V. Prabhakaran, who is a proclaimed offender in the Rajiv Gandhi assassination case. Annexure G to G2 are the Press cuttings of the criticism of the LTTE and Tamil chauvinist groups operating in India, are marked as Ex.PW-2/A62 to Ex. PW-2/A64.
4. I also filed an additional affidavit dated 2.9.2004 on 4.9.2004, which I tender in evidence as Ex.PW-2/B. Along with this affidavit Annexure-B3 is filed which is the copy of the judgment

dated 28.7.2004 passed by the District and Sessions Judge for E.C. Act and NDPS Act cases, Madurai in Calender Case No. 509 of 1998 convicting the accused therein for offences under the Unlawful Activities (Prevention) Act, 1967 and the NDPS Act. The said Annexure is marked as Ex.PW-2/B1.

5. Some more events came to light of the State, which are stated in the additional affidavit dated 13.9.2004 along with Annexures D4 and F9. It was filed before this Tribunal on 15.9.2004 with the permission of this Tribunal. I tender the same in evidence as Ex. PW-2/C. Annexures thereto are marked as Ex.PW-2/C1 and Ex.PW-2/C2.
6. That I have already filed the above-said three affidavits by way of evidence and the contents of these affidavits and the annexures annexed thereto, may be read as a part and parcel of this statement.
7. That the contents of the above-said affidavits are based on official records and personal knowledge. I have furnished all material justifying the grounds for declaring LTTE as an unlawful association. Unless the ban continues to be in force, the very purpose of declaring LTTE as an Unlawful Association which was initially enforced in 1992 for a period of 2 years and subsequently extended from time to time for every two years, i.e. in 1994, 1996, 1998, 2000 and 2002 would be defeated and would be highly detrimental to the sovereignty and territorial integrity of India.”

He has, in his statement, also pleaded for continuation of the ban on the LTTE by stressing that unless the ban continues to be in force, the very purpose of declaring LTTE as an Unlawful Association, which was initially

enforced in 1992 for a period of 2 years and subsequently extended from time to time for every two years, would be defeated and would be highly detrimental to the sovereignty and territorial integrity of India.

Reading of his affidavit dated 28.7.2004 would reveal that an attempt is made to justify the Notification dated 14.5.2004 on the following basis:

- i) that the Liberation Tigers of Tamil Eelam is an association actually based in Sri Lanka but having sympathizers, supporters and agents on the Indian soil;
- ii) that the LTTE's objective for a separate homeland (Tamil Eelam) for all Tamils threatens the sovereignty and territorial integrity of India, and amounts to cession and secession of a part of the territory of India from the Union and thus falls within the ambit of an unlawful activity;
- iii) the turbulence in Sri Lanka is being exploited by pro-LTTE forces to draw up support for the LTTE and its cause by taking out processions, demonstrations, etc., in spite of the ban, causing disquiet and threat to the security of the State of Tamil Nadu;
- iv) most of the criminal cases involving LTTE and pro-LTTE groups like Tamil Nadu Liberation Army (TNLA) have ended in conviction and the Tamil Eelam concept still remains as a goal among the pro-LTTE groups in Tamil Nadu and the process are still at work to further its cause, thereby contributing to the said highly vulnerable milieu in which LTTE's free functioning in India as a lawful association if allowed, is likely to be highly detrimental to the sovereignty and territorial integrity of India;
- v. the LTTE continues to be an extremely potent, most lethal and well-organised terrorist force in Sri Lanka and has strong connections in Tamil

Nadu; and certain pockets of southern India. The LTTE continues to use the State of Tamil Nadu as the base for carrying out smuggling of essential items like petrol and diesel, besides drugs to Sri Lanka;

vi. the LTTE will continue to remain a strong terrorist movement and stimulate the secessionist sentiments to enhance the support base of the LTTE in Tamil Nadu as long as Sri Lanka continues to remain in a state of ethnic strife torn by the demand for Tamil Eelam which finds a strong echo in Tamil Nadu due to the linguistic, cultural, ethnic and historical affinity between the Sri Lankan Tamils and the Indian Tamils in Sri Lanka;

vii. (a) enquiries on the activities of the LTTE cadres/dropouts who have been traced out recently in the State of Tamil Nadu would suggest that the cadres sent to Tamil Nadu would ultimately be utilized by the LTTE for unlawful activities;

(b) the activities of Pro-LTTE organisations and individuals have come to notice in India, despite the ban in force and attempts have been made by these forces to extend their support to the LTTE;

(c) the LTTE leaders have been cynical of India's policy on their organization and reaction of the State machinery in curbing their activities. The resolution passed in the Tamil Nadu State Assembly to extradite the LTTE leader V.Prabhakaran, evoked strong criticism from pro-LTTE elements in India and in Sri Lanka;

To back each of the aforesaid categorised submission, details are given sprinkled with instances and supported by documents.

In respect of (i) above, instances which are given are the speeches of various individuals/organizations calling upon and criticizing the

Government on their policies towards Sri Lanka. Gist of these speeches is mentioned in para-7 of the affidavit and copies of all the speeches are also annexed with the affidavit as Annexure-A to A-30. All these documents have been exhibited. It may be mentioned here that Tamil Nadu State Assembly had passed a Resolution dated 16.4.2002 urging the Central Government to take immediate steps to insist Srilankan Government for the arrest of prime accused Vellupillai Prabhakaran, LTTE Chief, concerned in the assassination of Shri Rajiv Gandhi, former Prime Minister of India and hand him over to the Indian Government. The Central Government was also urged in the said Resolution not to permit anyone belonging to LTTE into India. Citing the history of LTTE's activities as a terrorist organization, posing a threat to the security, integrity and sovereignty of the nation, and its other allies having close nexus with it and taking as exception to the statement of V.Prabhakaran in a meeting with pressmen on 10.4.2002 formed the basis of the said Resolution. Many of the speeches, which are filed with the affidavit as Annexure-A to A30, are the condemnation and criticism of the aforesaid Resolution.

It may be that fair criticism of such Resolutions is permissible, as right to speech is one of the fundamental rights conferred on every citizen of this country under Article 19(1)(a) of the Constitution of India. To that extent these speeches may not be relied upon by the deponent to support the Notification in question imposing the ban. However, in some of these speeches this line of fair criticism is crossed and the speakers have entered into forbidden area and the exhortation in those parts of the addresses would fall within the mischief of Section 2(f) of the Act, 1967 and could be dubbed as intending to or supporting the aims of LTTE to bring about the secession of a part of territory of India or inciting any individual or groups of

individuals to bring about such cession or secession and may be punishable under Section 13 of the Act. I am consciously and deliberately avoiding specific reference to such speeches and particular quotations therefrom as, in respect of many speeches, F.I.Rs are registered against the makers of those speeches under the provisions of the Act, 1967 as well as other statutes. Any observations made in detail may affect the trial of those cases pending in the Courts of law. It would be suffice to observe that for the purpose of considering enquiry under sub-Section 3 of Section 4, it would constitute relevant material.

In support of (ii) above, details given in the affidavit of Mr.A.Kandaswamy include: (a) the PFLT (People's Front of Liberation Tigers) is a political front of LTTE which enumerates various aims, objective and doctrine of the LTTE, of which the following two objects are significant:

i) to fight for the right of the self-determination of the people of the Tamils and Muslims;

ii) to fight and preserve the geographical identity and integrity of the traditional homelands of the Tamils and Muslims;

(b) These objectives speak of all Tamils irrespective of geographical distinction and an inference is irresistible that while the immediate struggle of LTTE is against the Government of Sri Lanka, its larger objective, given the geographical contiguity and ethnic affinity, would include the Tamil areas of India also and thus pose a real and serious threat to the sovereignty and territorial integrity of India. There is no indication to show that PFLT

has revoked their constitution or in any manner retracted from its avowed objectives of creating an independent and separate Tamil Eelam consisting of parts of India.

(c) It is stated that the LTTE has created the Tamil National Retrieval Troops and Tamilar Pasarai, secessionist organizations in Tamil Nadu in furtherance of its objective seeking secession of Tamil Nadu and questioning India's sovereignty and territorial integrity. Some of the Tamilar Pasarai cadres are accused in TADA cases. Instance of the following cases registered by Bangalore City Police in which the Tamilar Pasarai cadres are involved, is quoted to show that these cadres are still pursuing their avowed objectives:

i) The Frazer Town Police (Bangalore City) arrested (1) Vijaymurthy @ Murthy @ Viji, (2) Shivkumar @ Shiva, on 4.11.2002 and recovered one pipe bomb and one hand-grenade respectively from their possession. A case in Frazer Town Police Station Cr.No.472/2002 u/s 3,4,5 and 6 of Explosive Substances Act 1908 was registered. On their confession D.Kumar, Srinivasa, Sathyaraj @ Nagaraj, Raja A.P. @ Devendran, John Selvaraj, Gunasheelan @ Guna, Murugan @ Muruganandam @ Muruga and Prof. Nedunchezian were arrested on various dates and documents, huge amount of explosives, pipe bomb shells, Aluminium grenade shells, country made revolver, etc., were seized. From the house of accused Gunasheelan @ Guna a book printed in Tamil "Indiath Dravidath Deshiyam" which is having a map of India showing Tamil country separating from India, Nariyathan Thotram, 4 Tamil books having photo of LTTE supremo of Prabhakaran, articles supporting sandal wood smuggler Veerappan, etc., were seized. Investigation revealed that all the accused in this case are sympathizers of LTTE with the ideology of liberating Tamils through armed

struggle. Elangovan, a Tamilar Pasarai cadre, is an absconding accused in this case. He is a proclaimed offender in two TADA cases in Tamil Nadu. Charge Sheet was laid in this case before the XI ACMM Court, Bangalore and was taken on file in CC NO.24106/2003, dated 1.2.2003. Copy of the report of the Asst. Commissioner of Police, Frazer Town Sub-division, Bangalore City is enclosed as **Annexure-B**.

ii) The TNRT and TNLA cadres link in the abduction of Dr. Rajkumar, a Kannada matinee idol and 3 others from his farm house at Dodagajanur on 30.7.2000 by Veerappan and his cohorts was discussed in detail in the previous proposals and affidavits. The case is still under investigation. Some of the accused concerned in this case are still at large and efforts are still on to secure them.

iii) The political stand of the Liberation Tigers of Tamil Eelam was reflected in the election manifesto of the four-party Tamil National Alliance (TNA) which declared that "Self-determination" would be "inevitable" if the demands of the "Tamil-speaking people" were not met. "If the demands of the Tamil national continue to be denied, if a just political solution is rejected, if military occupation and government oppression continue, establishing the sovereignty and independence of the Tamil nation on the basis of its right to self-determination would become an inexorable reality," the manifesto of the LTTE-backed TNA, which was released on 2.3.2004, said. (Press- The Hindu dt 2.3.2004). **Annexure-B-1**.

iv) The former Special Commander of the Liberation Tigers of Tamil Eelam (LTTE), V. Muralitharan ('Col.' Karuna), on 11.7.2004 said he would start a political party "within a month" and charged his former leader, V. Prabakaran, with pursuing a war strategy. In a telephone interview with the BBC Tamil Service- the first since he left his eastern base in April- 'Col.'

Karuna also claimed that he had personally given an arms procurement list to the LTTE's chief for arms procurement, Kumaran Pathmanathan (KP), during his travels to Thailand as a member of the LTTE peace negotiating team. **(Hindu-online, dated 12.7.2004).**

d) There have been instances wherein the LTTE organization in India is in close nexus with other extremist organizations functioning in India.

“When the People’s War (PW) and the LTTE decide to have a tryst, it is the Bay of Bengal which serves as the venue”. “In fact, Tamil Tigers regularly ply the Maoist guerrillas with guns and ammunitions. The landings happen on the coastline in Krishna and Guntur districts”. “The coastline between Machilipatnam and Guntur, where the land is in the shape of a belly, is most conducive for such types of activities because the sea is calm in that area. The coastline here does not have too many habitations”. “LTTE operatives are active on the AP coast disguised as fishermen, sometimes in mechanized boats and at times in locally made boats carrying arms concealed in boxes”. “PW couriers received arms and ammunition from the LTTEs fishing boats in the second and last quarters of 2003. The shipments were transported away on the national highway which runs near the coast in the Palnadu area”. **(Press: Times of India, dated 18.6.04).**

Annexure-B-2.

In support of (iii) above, reliance is placed on the same very speeches which are marked as Annexure A to A30 by stating that in spite of the ban, attempts have been made by the pro-LTTE elements extending their support to LTTE by way of conducting public meetings/processions etc. In addition, certain more instances are given in para-10. Under head (iv) instances are

given of those criminal cases which have ended in conviction during the period in question i.e. May,2002 to May,2004. Some of these instances have already taken note of while discussing the affidavit filed on behalf of Central Government. In addition, few more such cases of conviction, inter alia, under Section 13 of the Act,1967 are cited.

Examples are also given of the cases which were registered earlier and are still alive and in many cases some of the LTTE cadres and members of Tamilar Pasarai, Tamil National Retrieval Troops and Tamil Nadu Liberation Army, who are accused in these cases are at large and efforts are on to secure them. Specific stress is laid on the fact that Mr.Prabhakaran, leader of LTTE and his Intelligence Chief Pottu Amman, wanted in Rajiv Gandhi Assassination case are still absconding who were declared as proclaimed offenders. It is mentioned that the Supreme Court in its judgment clearly established the role of LTTE in Rajiv Gandhi assassination case and several key LTTE operatives were convicted but the sentence to death by hanging awarded to some of them are yet to be executed.

Maintaining that LTTE continues to be an extremely potent, most lethal and well-organised terrorist force in Sri Lanka and has strong connections in Tamil Nadu and certain pockets of Southern India and also that it continues to use the State of Tamil Nadu as the base for carrying out smuggling of essential items like petrol and diesel, besides drugs to Sri Lanka, it is averred that POL items and other essential commodities are in great demand by LTTE and to overcome the shortfalls, they are luring the fishermen and known smugglers with a good premium for such commodities and they in turn engaged in smuggling essentials to the LTTE. It is stated on oath that the State machinery has detected such smuggling cases and instances of number of such cases are given in para-13 of the affidavit which

are now pending trial before various courts and the FIRs registered and or charges framed in under Section 13 of the Act, 1967. In support of its contention that LTTE continues to remain a strong terrorist movement and stimulate the secessionist sentiments to enhance the support base of the LTTE in Tamil Nadu, apart from speeches by pro-LTTE groups, some of the activities of LTTE since 14.5.2002, aimed at the aforesaid direction, coming to the notice of the State Government, are stated in para-14 of the affidavit. These activities, inter alia, relate to killing of various innocent persons by Tamil Tiger Rebels and Guerrillas and also assassination of some Government officials/police officers by these groups. Various methods adopted for this purpose include suicide bomber killing. It is sought to contend on the basis of these examples that LTTE continues to repose faith in use of violence to achieve its ends.

It is also stated in support of (vii) above that enquiries from certain arrested /drop outs LTTE cadres have revealed that the cadres sent to Tamil Nadu by LTTE would ultimately be utilized for unlawful activities. Three examples are given where such persons are lodged in Special Camps and enquiries from them have revealed the following:

(a) The Political Wing of LTTE headed by Tamil Selvan has several divisions under it and political propaganda through the print and visual media was its mainstay. The Political Wing chose to utilize the services of ex-cadres and ardent LTTE supporters in Tamil Nadu to provide accommodation, channelise funds and serve as conduits for communication and also sought to utilize Chennai as transit point for migration of LTTE cadres, education for LTTE cadres, procuring supplies, etc. The cadres managed to arrive in India through forged documents. The LTTE succeeded in spotting talents among the refugees for their future use.

(b) The Consignment of computers, peripherals, automobiles spares and medicines were procured in Chennai with the help of ex-cadres and helpers and were dispatched to Sri Lanka with the help of one Vijayan of Rameswaran. Laxman, Sea-Tiger of LTTE in Mannar arranged the boat for ferrying goods.

(c) Thus, within three years, the Political Wing of LTTE had used Chennai as a transit point for migrating LTTE cadres, educating four other cadres (Naresh, Chockan, Vengai and Ajith) in varied fields and procuring supplies for LTTE use.

Likewise from the examples given, it is inferred that activities of pro-LTTE activists and individuals despite the ban enforced, clearly suggest that efforts are made to extend their support to LTTE and also that LTTE leaders have been cynical of India's policy on their organization and reaction of the State machinery in curbing their activities.

In the additional affidavit dated 2.9.2004 some more instances of conviction of pending cases are given wherein accused persons have been convicted under the provisions of Section 13(1)(2) of the Act, 1967. A copy of the judgment is also enclosed with this affidavit. In the second additional affidavit dated 13.9.2004, registration of yet another FIR is cited wherein two persons with seven compact discs (CDs) under suspicious circumstances were arrested which were to be delivered to certain persons, named in the first affidavit, who belong to LTTE cadres and enquiries revealed that they were operating from here. It is contended, on the basis of this instance that persons of LTTE cadres in Tamil Nadu and indulging in pre-judicial activities by them even after the ban has been extended, stands further approved.

Ms. Barkha Babbar, learned counsel appearing for Central Government and Mr.S.Jayakumar, counsel for State of Tamil Nadu extensively referred to the aforesaid material during their arguments in justifying the issuance of the Notification dated 14.5.2004 extending ban on the LTTE under Section 3(3) of the Act,1967 for a further period of two years from the date of Notification. It was also pointed out by them that simultaneously with the repeal of POTA, by issuing an ordinance, Unlawful Activities (Prevention) Amendment ordinance 2004 has been published on 21.9.2004. It was also submitted that Chapter-6 of this ordinance relates to terrorists organizations. This ordinance makes significant amendment to the Act,1967 by Section 2(m), definition of terrorist organisation is included to mean an organization listed in the Schedule or organisation operating under the same name as an organisation so listed. Schedule annexed to the Ordinance specifies 32 terrorists organisations and LTTE is mentioned at Serial No.21 in this schedule. It was thus submitted that LTTE is even declared as terrorist organization in India by the aforesaid Ordinance having statutory force. In the absence of any representation from LTTE, entire material placed by the Central Government as well as State Government including the deposition of their witnesses remain unrebutted. Obviously neither there is cross-examination of these witnesses nor anyone is produced in rebuttal. Therefore, one has to proceed on the basis of the aforesaid material having been proved on the record.

After considering the aforesaid material placed on record and the arguments advanced by learned counsel for State as well as Union of India, I am satisfied that the opinion formed by the Central Government resulting into in issuing the Notification dated 14.5.2004 is based on cogent and relevant material justifying exercise of its power under Section 3(1) of the

Act by declaring LTTE as an unlawful association. The grounds which are stated in the Notification have the necessary backing of the material on record.

Section 2(g) of the Act defines Unlawful Association as under:

2 (g) “ unlawful association” means any association-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153 A or section 153B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir.”

The definition of Unlawful Activity is provided in Section 2(f) of the Act which reads as under:

2 (f) “ unlawful activity,” in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)-

(i) which is intended, or supports any claim to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;”

The Central Government was satisfied keeping in view the constitution of LTTE that the LTTE is an unlawful association and therefore opined that it was an Unlawful Association and was declared as such for the first time vide Notification dated 14.5.1992. In spite of this ban LTTE continued with these activities and, therefore, successive bans were imposed. After this ban and right up to last ban imposed vide Notification dated 14.5.2002 were upheld by the successive Tribunals satisfying about the unlawful activities of the LTTE and confirming the said declaration of the Central Government. The instances narrated above and the material which is placed on record would clearly indicate that LTTE has not seized its unlawful activities and continued with these activities even after ban of 14.5.2002. Taking note of these activities and keeping in view the fact that LTTE had systemically infiltrated into Tamil Nadu and trained the armed cadres, the Central Government came to the conclusion that it was necessary to declare LTTE to be an unlawful association for another period of two years w.e.f. 14.5.2004 and Notification of that date was accordingly issued. Such Notification in these circumstances cannot be faulted with. The Tribunal after the receipt of records called upon LTTE under sub-Section 2 of Section 4 of the Act, 1967 to show cause why the association be not declared unlawful. LTTE has failed to show cause and was proceeded ex-parte. Necessary enquiry has been held by this Tribunal in the manner specified in Section 9 of the Act. The Central Government as well as State Government has produced the material on record justifying the declaration of LTTE as an unlawful association which is discussed in detail hereinabove. May be there are some peace talks in progress, particularly with Sri Lankan Government. However, these are not fructified so far. Furthermore, important fact of our purpose is that, notwithstanding these peace talks, the LTTE is indulging into unlawful activities unabashedly. To

state briefly, the prime objective of LTTE as “Total Liberation of its homeland and the establishment of an independent, sovereign socialist State of Tamil Nadu” still remains to be its prime target and many activities during this period are aimed at that by the LTTE as well as pro-LTTE groups. This objective would find its threat in seeking secession of Tamil Nadu and thus questioning India's sovereignty and territorial activities. It has also come on record that for the aforesaid purpose and also in order to continue with its illegal activities, despite ban, there is a continues infiltration of LTTE cadres into India, particularly in the State of Tamil Nadu and there is persistent smuggling activities and other clandestine operations. The LTTE has also created Tamil National Retrieval Troops (TNRT) and Tamiliar Passarai, secessionist organisations in Tamil Nadu, in furtherance of its objective, seeking secession of Tamil Nadu and questioning India's sovereignty and territorial integrity. LTTE cadres/sympathizers/drop-outs are arriving in Tamil Nadu despite the existing ban. There is a spurt of cases under Unlawful Activities (Prevention) Act, 1967; many earlier cases have ended in conviction; many new cases have been registered; and many such cases are under investigation. Details of all such cases indicate that cadres sent to Tamil Nadu would clearly be utilized by the LTTE for unlawful activities; attempts have been made by pro-LTTE organizations and Tamil chauvinists groups to extend their support to LTTE; LTTE leaders have been cynical over India's policies; their activities are detrimental to the sovereignty and territorial integrity of India.

It is, therefore, necessary that ban imposed earlier should continue to check and control the unlawful activities of the LTTE as well as pro-LTTE elements. Circumstances do justify declaration of LTTE as an unlawful

association. The Tribunal, therefore, is inclined to accept that despite declarations dated 14th May, 1992, 14th May, 1994, 14th May, 1996, 14th May, 1998, 14th May, 2000 and 14th May, 2002 declaring the LTTE to be an unlawful association, it is continuing to indulge in unlawful activities. It is no doubt true that the activities of the LTTE have been curtailed to a large extent and controlled in view of the ban imposed upon its activities by the earlier Notifications, sympathy for Tamil Eelam concept still remains and the material placed before Justice P.N.Nag, Tribunal; Justice Devinder Gupta, Tribunal and Justice S.K. Mahajan, Tribunals, continues to have strong bearing and relevance to the present situation in Tamil Nadu.

The LTTE, in the opinion of the Tribunal, is continuing to remain a strong terrorist movement and so long as Sri Lanka continues to remain in a state of ethnic strife, torn by the demand for Tamil Eelam, which finds a strong echo in Tamil Nadu due to the linguistic, cultural, ethnic and historical affinity between the Sri Lankan Tamils and the Indian Tamils, material found by the earlier Tribunals to be valid groups for declaring the LTTE as an unlawful association earlier, will continue to remain a strong underlying basis for continuing the ban on the LTTE in India. The upshot of the aforesaid discussion would be to confirm the declaration made by Central Government vide Notification dated 14.5.2004 and the same is accordingly confirmed.

(JUSTICE A.K. SIKRI)
UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

[F. No. I-11034/9/2003-IS. III]

L. C. GOYAL, Jt. Secy.